

**LFC Requester:****Julia Downs****AGENCY BILL ANALYSIS  
2016 REGULAR SESSION****WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:****[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)***and***[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)***{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}***SECTION I: GENERAL INFORMATION***{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}**Check all that apply:*

Original ☐ Amendment ☐  
 Correction ☐ Substitute ☒

**Date** 1/27/2016**Bill No:** HB 72s**Sponsor:** Reps. Gentry and P.S. Pacheco**Agency Code:** 305**Short** Allow Use of Juvenile**Person Writing** Rick Word, AAG**Title:** Disposition and Evidence**Phone:** 827-6029**Email** rword@nmag.gov**SECTION II: FISCAL IMPACT****APPROPRIATION (dollars in thousands)**

| Appropriation |      | Recurring<br>or Nonrecurring | Fund<br>Affected |
|---------------|------|------------------------------|------------------|
| FY16          | FY17 |                              |                  |
|               |      |                              |                  |
|               |      |                              |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

| Estimated Revenue |      |      | Recurring<br>or<br>Nonrecurring | Fund<br>Affected |
|-------------------|------|------|---------------------------------|------------------|
| FY16              | FY17 | FY18 |                                 |                  |
|                   |      |      |                                 |                  |
|                   |      |      |                                 |                  |

(Parenthesis ( ) Indicate Expenditure Decreases)

## **ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

|              | <b>FY16</b> | <b>FY17</b> | <b>FY18</b> | <b>3 Year<br/>Total Cost</b> | <b>Recurring or<br/>Nonrecurring</b> | <b>Fund<br/>Affected</b> |
|--------------|-------------|-------------|-------------|------------------------------|--------------------------------------|--------------------------|
| <b>Total</b> |             |             |             |                              |                                      |                          |

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

##### **Synopsis:**

The House Regulatory and Public Affairs Committee substitute for HB 73 retains all the original language from HB 72, but adds new language in Section 2 and a new Section 3, clarifying that juvenile dispositions of youthful offenders are confidential and authorizing courts to set aside orders sealing juvenile records in specified, limited circumstances. Specifically, Section 2 of HB72s adds two new sentences to the proposed new subsection to NMSA 1978, Section 32A-2-18, directing courts that may consider juvenile dispositions of youthful offender and evidence given at hearings in connection with such determinations to keep them confidential, with any review or discussion to done in camera, and further specifying that all motions, documents or evidence submitted to the court that pertain to the juvenile disposition must be sealed unless they are considered not confidential. HB 72s also contains a new Section 3 that adds a new subsection to NMSA 1978, 32A-2-26. The new subsection authorizes a court to set aside a sealing order for the juvenile disposition of a youthful offender when considering such disposition while setting the conditions of release for a person charged with a felony or when rendering a sentence after a conviction.

#### **FISCAL IMPLICATIONS**

Note: major assumptions underlying fiscal impact should be documented.

Note: if additional operating budget impact is estimated, assumptions and calculations should be reported in this section.

#### **SIGNIFICANT ISSUES**

1. The statutes amended under HB 72s are contained in the Children' Code, which specifies that use of the term "court" in that code without qualification shall mean the children's court division of the district court. See NMSA 1978, Section 32A-1-4(C). The Children's Code similarly defines "judge" to mean a judge in the children's court division. See Section 32A-1-4(N). If it is the intent of this bill to allow non-Children's Court judges to consider juvenile dispositions and related evidence in criminal proceedings, the defined terms "court" and "judge" should be so qualified.

2. The committee substitute adds language protecting the confidentiality of records relating to the juvenile disposition of youthful offenders when such records or references to them are made in subsequent criminal proceedings. The substitute bill does not appear to address the apparent

conflict with the Delinquency Act. Our analysis of HB 72 had noted the following:

By allowing the consideration of a juvenile disposition and evidence given in juvenile proceedings in subsequent criminal proceedings involving the same person, HB 72 potentially conflicts with a stated purpose of the Delinquency Act. The Delinquency Act identifies as the first of numerous purposes the following: “[C]onsistent with the protection of the public interest, to remove from children committing delinquent acts the adult consequences of criminal behavior... .” NMSA 1978, Section 32A-2-1(A). Allowing courts to consider the juvenile disposition of a youthful offender and evidence given at hearings relating to such a disposition in later cases where that individual is charged as an adult could be perceived as contrary to one of the principal purposes of the Delinquency Act.

**PERFORMANCE IMPLICATIONS N/A**

**ADMINISTRATIVE IMPLICATIONS N/A**

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP N/A**

**TECHNICAL ISSUES**

See Item 1 under Significant Issues above.

**OTHER SUBSTANTIVE ISSUES N/A**

**ALTERNATIVES N/A**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL N/A**

**AMENDMENTS N/A**